

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

-----x
SEVEN SPRINGS, LLC,

Plaintiff,

-against-

Index No.
21162/09

THE NATURE CONSERVANCY, ROBERT BURKE,
TERI BURKE, NOEL B. DONOHUE and
JOANN DONOHUE,

Defendants.
-----x

20 County Center
Carmel, New York
August 22, 2011

FILED

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TIMOTHY C. IDOM
COUNTY CLERK
COUNTY OF WESTCHESTER

BEFORE: HON. FRANCIS N. NICOLAI,
Justice of the Supreme Court

COHN & SPECTOR, P.C.
Attorneys for the Plaintiff
200 East Post Road
White Plains, New York 10601
BY: JULIE COHN, ESQ.

BENOWICH LAW, LLP
Attorneys for the Defendant,
Nature Conservancy
1025 Westchester Avenue
White Plains, New York 10604
BY: LEONARD BENOWICH, ESQ.

Mary C. Traynor
Senior Court Reporter

PROCEEDINGS

1
2 (Plaintiff's Exhibit 1, real estate tax
3 expenses, marked for identification.)

4 (Plaintiff's Exhibit 2, computer payroll
5 expenses, marked for identification.)

6 (Plaintiff's Exhibit 3, office expenses
7 and supplies, marked for identification.)

8 (Plaintiff's Exhibit 4,
9 stationery/printing/postage expenses, marked for
10 identification.)

11 (Plaintiff's Exhibit 5, telephone
12 expenses, marked for identification.)

13 (Plaintiff's Exhibit 6, fuel/steam
14 expenses, marked for identification.)

15 (Plaintiff's Exhibit 7, electricity
16 usage expenses, marked for identification.)

17 (Plaintiff's Exhibit 8, truck and auto
18 expenses, marked for identification.)

19 (Plaintiff's Exhibit 9,
20 messenger/delivery expenses, marked for
21 identification.)

22 (Plaintiff's Exhibit 10, painting
23 supplies, marked for identification.)

24 (Plaintiff's Exhibit 11, appliance and
25 equipment expenses, marked for identification.)

PROCEEDINGS

1
2 (Plaintiff's Exhibit 12, hardware
3 supplies, marked for identification.)

4 (Plaintiff's Exhibit 13, repairs,
5 materials and supplies, marked for
6 identification.)

7 (Plaintiff's Exhibit 14, plumbing
8 repairs, materials and supplies, marked for
9 identification.)

10 (Plaintiff's Exhibit 15, electric
11 repairs and supplies, marked for identification.)

12 (Plaintiff's Exhibit 16, rubbish
13 removal, marked for identification.)

14 (Plaintiff's Exhibit 17, roof repairs,
15 marked for identification.)

16 (Plaintiff's Exhibit 18, marble
17 maintenance, contract, marked for identification.)

18 (Plaintiff's Exhibit 19, HVAC
19 maintenance, marked for identification.)

20 (Plaintiff's Exhibit 20, locks and door
21 repairs, marked for identification.)

22 (Plaintiff's Exhibit 21, fire and
23 security system, marked for identification.)

24 (Plaintiff's Exhibit 22, extermination
25 expenses, marked for identification.)

PROCEEDINGS

1
2 MR. BENOWICH: Leonard Benowich,
3 Benowich Law Firm, 1025 Westchester Avenue, White
4 Plains for the Nature Conservancy.

5 THE COURT: Co-counsel, Mr. Cohn?

6 MR. COHN: I would like to introduce Mr.
7 James Thayer. He graduated from Hofstra and is
8 awaiting the results of the July bar.

9 That is one of the financial officers of
10 the Trump Organization.

11 THE COURT: Very well. Thank you.

12 What I have on this, gentlemen, is a
13 copy of the Decision of the Appellate Division
14 which remitted the matter back to Supreme Court,
15 Westchester for the limited purpose of setting the
16 amount of bond that the appellant has to post.
17 They granted temporary relief with regard to
18 entering upon the property, with regard to any
19 vehicle equipment or machinery, etcetera, where
20 they conduct, one appellant may conduct.

21 You're the appellant?

22 MR. BENOWICH: I am.

23 THE COURT: You don't want to do any
24 land surveys here?

25 MR. BENOWICH: No.

PROCEEDINGS

1
2 THE COURT: I didn't think so. That
3 word is wrong in the decision. It should be
4 Respondent may conduct handheld surveys.

5 Okay, Mr. Benowich, since you're the
6 person who has to post the bond, I'll let you go
7 first.

8 MR. BENOICH: Actually, your Honor, I
9 am the one who has to post the bond, but it's Mr.
10 Cohn's client's burden of proof to prove damages.

11 THE COURT: He has to establish a fair
12 and reasonable number.

13 Mr. Cohn, do you wish to be heard?

14 MR. COHN: Just as the briefest of
15 openings.

16 We intend to prove through two witnesses
17 here that the total amount of the bond should be
18 \$2,955,295, or round it up to a \$3 million bond.

19 We intend to prove that by virtue of
20 prior expenses imposed on a limited period of time
21 for the decision on the appeal and that will be
22 our proof.

23 THE COURT: Very well. Whoever will be
24 called as a witness, first witness, can go on the
25 witness stand. Other witnesses should step

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2 outside.

3 MR. COHN: All right. Mr. McConney is
4 limited to financials. He will be called second.

5 The first witness, Mr. Harold Goldman,
6 is describing the nature of the property, nature
7 of the needs.

8 THE COURT: Do you have any objection to
9 the second witness staying in the courtroom while
10 the first testifies, Mr. Benowich?

11 MR. BENOWICH: No, Judge, as long as
12 there is two. We're talking about a lot of people
13 here.

14 MR. COHN: No, that's it.

15 We call Mr. Harold Goldman.

16 THE COURT OFFICER: Raise your right
17 hand.

18 Do you swear the evidence you are about
19 to give in the matter before this Court will be
20 the truth, the whole truth and nothing but the
21 truth, so help you God?

22 THE WITNESS: I do.

23 THE COURT OFFICER: State your full
24 name.

25 THE WITNESS: Hal Goldman.

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2 THE COURT OFFICER: Your address?

3 THE WITNESS: 487 East Main Street,

4 Mount Kisco, New York.

5 DIRECT EXAMINATION

6 BY MR. COHN:

7 Q. Mr. Goldman, what are your duties in connection
8 with the Trump Corporation?

9 A. Vice-President of Development, Hudson Valley
10 Region.

11 The concentration of my duties at this time is
12 the completion of the approval process for Seven
13 Springs, as well as other tasks involving development
14 activities in the lower New York, Hudson Valley region.

15 Q. Now, what, in the briefest of terms, what is
16 your background and you may, for my purposes, confine it
17 to your background, in relation to the duties you were
18 called upon to do with the Seven Springs project.

19 A. I have a bachelors from Columbia University and
20 Master's Degree in urban planning, Columbia University
21 School of Architecture.

22 I've had a fairly lengthy career in general and
23 private consulting, development, management of
24 litigation and both executive positions and construction
25 through all phases, shelter industry.

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2 Q. How long have you been with the Trump agency?

3 A. Six and-a-half years.

4 Q. What is it, I'll call it the Seven Springs
5 project. What is it?

6 A. The Seven Springs project is a tract of
7 approximately 230 acres located in three adjacent towns;
8 Bedford, North Castle, New Castle, which at the present
9 time in Bedford has preliminary subdivision approval and
10 we are seeking approval under the State Environment
11 Quality Review Act and subsequent subdivision approval
12 for North Castle and New Castle.

13 Q. Now, the subject matter of this proceeding is
14 the amount of a bond.

15 For what portion of the project is it your
16 understanding that that addresses?

17 A. The North Castle portion, its affect on the
18 other tracts making up the entire parcel.

19 Q. What are your duties in connection with the
20 Trump Organization relative to, let us say the North
21 Castle and Bedford properties?

22 A. I act as the urban planner coordinating the
23 effort, seeking both SEQRA approval and subdivision
24 approval and as the connective in the field managing
25 consultants and carrying on communication and

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2 negotiations with the governmental bodies involved in
3 that approval.

4 Q. What type of contact do you have with the
5 governmental bodies?

6 A. I have frequent contact with each of the three
7 divisions. I usually approach discussions to assure
8 carrying out all the approval steps, including public
9 hearings.

10 Q. What is the type of development that is
11 projected for all of these projects?

12 MR. BENOWICH: Objection.

13 THE COURT: I'm sustaining at this
14 point.

15 Proceed.

16 Q. What's being built or intended to be built
17 there?

18 MR. BENOWICH: Objection.

19 THE COURT: That might have some
20 bearing.

21 MR. BENOWICH: My question is to the
22 breadth of it.

23 Counsel has already elicited that there
24 are three towns. One project already has
25 approval, so I think in fairness to today's

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2 hearing and my client, the question of what's been
3 approved and what isn't is a big difference. If
4 he asks generally what's going to be built, he has
5 something approved and something not.

6 THE COURT: I'll allow.

7 Proceed.

8 A. Residential. High-end residential,
9 single-family dwellings.

10 Q. In relation to those single-family dwellings,
11 what do you do in connection with the governmental
12 bodies?

13 MR. BENOWICH: Objection.

14 THE COURT: I'll allow it.

15 MR. COHN: Judge said you can answer.

16 A. We go through the process as mandated by the
17 State of New York to indicate that the project we will
18 build, regardless of its nature, will have no adverse
19 impact on the environment.

20 And we then go ahead to offer specific plans and
21 evidence that the subdivisions will comply also in all
22 respects with town codes.

23 Q. In connection -- withdrawn.

24 The North Castle project -- you indicated the
25 Bedford project has been approved. How many homes have

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2 been approved there?

3 A. Nine.

4 Q. How many homes are planned for the North Castle
5 project?

6 MR. BENOWICH: Objection.

7 THE COURT: I'm allowing it.

8 A. Our present thinking is seven.

9 Q. Now, can the project proceed with the present
10 stay in place?

11 A. No.

12 MR. BENOWICH: Objection.

13 THE COURT: That's valid.

14 Q. Why can't it proceed?

15 A. The most fundamental reason is that the Town of
16 North Castle has indicated on several occasions that
17 they will not accept the resumption of the SEQRA process
18 while the stay is in place.

19 MR. BENOWICH: Move to strike as
20 hearsay.

21 THE COURT: Sustained. Strike that from
22 the record.

23 Q. Have you attempted to submit documents to the
24 town in connection with ongoing --

25 THE COURT: Don't say town, Town of.

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2 MR. COHN: Thank you, your Honor.

3 Q. The Town of North Castle. What, if any -- what
4 if any impediment to going forward have you personally,
5 in your capacity, experienced by virtue of a stay being
6 in place on this property, the North Castle property?

7 MR. BENOWICH: Objection, your Honor.

8 THE COURT: Overruled. I'm allowing the
9 question to be answered.

10 A. I have in several meetings offered to resume the
11 SEQRA process and the town supervisor, town attorney and
12 director of planning have refused to accept those
13 documents, pending the release of the restraining order.

14 Q. What can't you do?

15 A. I'm sorry, I don't understand.

16 Q. By virtue of the action of not accepting the
17 documents, not going forward, what can you not do in
18 connection with this project, this North Castle project,
19 that you could do if the stay were not in place?

20 MR. BENOWICH: Objection.

21 THE COURT: I'm sustaining the
22 objection. You can pursue the line of
23 questioning.

24 It seems to be a convoluted,
25 multifaceted question. Two simple questions.

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2 Can you build nine homes in Bedford, as
3 a result of the stay in place.

4 THE WITNESS: In Bedford? Yes, sir.

5 MR. COHN: We have good approval there.

6 THE COURT: Excuse me. Now we have
7 approvals, but pursuant to this witness, can you
8 go ahead and build if you want.

9 Q. Let's go to North Castle with the seven homes,
10 the subject of this proceeding.

11 Can you build the seven homes?

12 A. No.

13 Q. Why?

14 THE COURT: No access at this point
15 until this issue of easement is resolved. Pretty
16 straightforward.

17 THE WITNESS: Thank you, sir.

18 Q. The Court used the term access. How, if at all,
19 does this stay affect access to the property?

20 MR. BENOWICH: Objection. The best
21 evidence of this is the Appellate Division's
22 injunction.

23 And the Appellate Division, with all
24 respect to your Honor's characterization, didn't
25 restrict access, restricts the use of motor

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2 vehicles and heavy equipment on my client's land.

3 THE COURT: The language is different
4 but the effect is the same.

5 MR. BENOWICH: May or may not be.

6 We take exception to that, your Honor,
7 because we'll make that clear on cross.

8 Q. I'm going to adopt the exact terminology Mr.
9 Benowich just used.

10 How does the restriction of heavy equipment
11 affect the ongoing nature of the project?

12 A. We have no ability to bring on the equipment and
13 carry out the studies that are mandated under SEQRA. We
14 do not have access to be able to grade and design the
15 roads that will be the road access to the property.

16 Q. Now, are there structures on the North Castle
17 property?

18 A. Yes.

19 Q. How many structures?

20 A. Approximately two or three.

21 Q. Would you briefly describe the largest
22 structure?

23 THE COURT: What's the relevancy?

24 MR. COHN: Maintenance, heat, light.

25 All expenses that are coming in for structures

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2 that have to be maintained during the period of
3 time that the stay is in place.

4 THE COURT: Suppose the stay wasn't in
5 place, would it still be maintained?

6 MR. COHN: They would still be
7 maintained, your Honor, but they would not be
8 maintained for the longer period of time that the
9 stay is in place.

10 THE COURT: It's somewhat speculative.

11 MR. COHN: We would be building our
12 project.

13 MR. BENOWICH: Your Honor, not only is
14 it speculative, it assumes the only way they can
15 maintain this structure is by crossing my road.
16 If they have been maintaining it during the time
17 that the preliminary injunction was in effect,
18 they are either in contempt or they found another
19 way to do it.

20 THE COURT: Sustained. The issue of the
21 structures is not relevant.

22 You have the Court's ruling. Proceed.

23 MR. COHN: May I inquire further?

24 Q. Are you buying fuel for these places?

25 A. Yes.

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2 MR. BENOWICH: Objection.

3 THE COURT: Same thing. Whether you are
4 buying fuel, providing heat, providing light,
5 providing garbage collection, providing cutting
6 lawns.

7 It is not relevant with regard to the
8 issue of what's the amount of bond to be posted.

9 I'm foreclosing all questions with
10 regard to that issue. You have an exception to my
11 ruling.

12 Proceed, Mr. Cohn.

13 Q. What type of expenses -- as far as you're
14 concerned, what type of expenses are being paid to
15 maintain the property that would ordinarily not, that
16 would be -- that would be shortened if in fact the
17 development could be -- could continue without a stay?

18 MR. BENOWICH: Objection.

19 THE COURT: I'm allowing it.

20 A. The intent is to develop it as a single gated
21 community. The fact that it is located in three
22 separate political districts to us has no meaning,
23 because we have it as one project to be built and
24 marketed as a whole.

25 We have very heavy maintenance expenses in the

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2 Bedford portion which are now entirely a waste, because
3 although we could theoretically build Bedford by itself,
4 commercially that would be catastrophic.

5 Q. What about the property at issue?

6 MR. BENOWICH: Your Honor --

7 THE COURT: One minute.

8 MR. BENOWICH: I move to strike all of
9 this. None were directed to North Castle. It's
10 all Bedford, with --

11 THE COURT: With regard to whether or
12 not there is additional expenses on the Bedford
13 property, that's not relevant. You may choose not
14 to go forward. That's a decision that you make.

15 I don't agree with the witness it will
16 be a marketing catastrophe. Why would it be? You
17 have nine homes you can build. Start doing your
18 development, build and sell. It will take you two
19 or three years any way to cut the roads and put
20 utilities in and, you know, subdivide the property
21 and build these supposedly high end residential
22 properties.

23 I'm sustaining.

24 Proceed, Mr. Cohn.

25 Q. What's happening in North Castle, sir, in

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2 connection with -- how does the delay affect North
3 Castle?

4 What expenses, categories, not amounts, what
5 expenses in the most general of terms, to continue, by
6 virtue of the stay, which otherwise would be curtailed
7 or shortened if the stay wasn't there and you could go
8 in, do the work and make the applications?

9 MR. BENOWICH: Objection.

10 THE COURT: I'm allowing it.

11 A. All of the corporate expenses that are involved
12 with owning and maintaining, in the nature of security
13 of the property, including the SEQRA application, since
14 the SEQRA application is pending, that we have to
15 maintain the property undisturbed, so everything that
16 the Trump Organization, Seven Springs spends on the
17 mortgage, insurance, maintenance of the property itself,
18 is increased by the delay in completing the approval
19 process.

20 Q. In relation to the structure --

21 MR. COHN: Your Honor, may I inquire? I
22 don't mean to quarrel with the Court's
23 instructions.

24 THE COURT: You would never quarrel with
25 the Court.

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2 MR. COHN: Never.

3 Q. For instance, describe the structure, describe
4 the structure on the subject property.

5 MR. BENOWICH: Objection.

6 Q. What's the largest --

7 THE COURT: I'm allowing. I sustained
8 an objection to that exact same question ten
9 minutes ago. What is the largest structure?

10 In my mind this is all irrelevant, but
11 ask the question, what's the largest structure.

12 A. The largest structure on the North Castle
13 property is known as the Heinz Mansion, a historical
14 structure of approximately --

15 THE COURT: Is it currently occupied?
16 Currently occupied or vacant?

17 THE WITNESS: Vacant.

18 THE COURT: Is the plan to continue that
19 mansion to be there or knocked down, once you
20 start developing?

21 THE WITNESS: Cannot be knocked down,
22 starred structure.

23 THE COURT: What's going to change?
24 It's there, you're keeping it, you can't knock it
25 down. You'll continue to keep it.

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2 What's changing? What's the difference
3 between now and a year from now or six months from
4 now? If you had access, what would you do
5 differently, rent?

6 THE WITNESS: Sell it. Revenue is the
7 difference. Now we have the maintenance.

8 THE COURT: Sell it for what, a
9 residence, or just somebody is going to buy, own a
10 mansion in North Castle?

11 THE WITNESS: Residence.

12 THE COURT: It's not occupied as a
13 residence, you're not renting?

14 THE WITNESS: No revenue.

15 THE COURT: Proceed, please.

16 Q. Is it heated?

17 A. Yes.

18 Q. And maintained?

19 A. And air conditioned.

20 THE COURT: Turn the water off, drain
21 the pipes, save the heating bill.

22 Move on, Mr. Cohn.

23 Q. What is the second largest -- what is the second
24 largest structure?

25 A. On North Castle?

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2 Q. Yes.

3 A. The other structure would be security gates.

4 THE COURT: Security gates?

5 THE WITNESS: Yeah.

6 THE COURT: Power operated or manually
7 operated gates?

8 THE WITNESS: Manually operated gates.

9 THE COURT: What do you mean? You have
10 to scrape them, paint them? How do you maintain
11 gates, is that what you're talking about?

12 THE WITNESS: One case, making sure they
13 are there and maintaining them and keeping the
14 locks intact.

15 THE COURT: Ballpark?

16 THE WITNESS: 1995, 1996.

17 THE COURT: Any problems with locks?

18 THE WITNESS: No, because up until two
19 years ago the gates were the property of the Town
20 of North Castle.

21 THE COURT: Move on from these gates.

22 Q. Where is the Heinz property?

23 THE COURT: I didn't hear the question.

24 Where is the what?

25 MR. COHN: Heinz, like ketchup.

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2 Q. Where is the Heinz property?

3 A. In Bedford.

4 Q. Is there someone to maintain these structures?

5 A. Yes.

6 Q. Who?

7 A. Ms. Debbie Stello, (ph.), who is in court
8 today, the general manager, who supervised on all
9 230 acres and she has the appropriate staff to do the
10 labor involved in that task.

11 Q. Where are these functions carried out, at the
12 property?

13 A. At the property.

14 Q. Any other locations the property is maintained?

15 A. All the costs maintained in the property are
16 paid from the central office.

17 Q. Where is the administration of the property
18 carried out?

19 MR. BENOWICH: Objection.

20 THE COURT: I'll allow.

21 A. 725 Fifth Avenue.

22 Q. Manhattan?

23 A. Manhattan.

24 Q. Is the project forming the subject matter of
25 this proceeding, the project itself, is it landlocked?

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2 MR. BENOWICH: Objection.

3 A. Yes.

4 MR. BENOWICH: I don't understand.

5 THE COURT: Project or seven homes in
6 North Castle?

7 MR. BENOWICH: Seven homes.

8 MR. COHN: Seven homes in North Castle,
9 that's what we're discussing, the project itself,
10 the ongoing nature of the project.

11 THE COURT: Excuse me.

12 MR. COHN: We're not talking about the
13 property, I'm talking about the project, can it
14 proceed? Let me clarify.

15 THE COURT: Limit your question to this
16 project in North Castle, landlocked.

17 Q. Is the project in North Castle landlocked?

18 A. Yes.

19 Q. Why?

20 A. Because there is no other access to that
21 project, except by what we call Old Oregon Road, the
22 road that was shown clearly in the 1973 town map with
23 the listing. For 16 years we carefully examined all
24 possible alternatives.

25 MR. BENOWICH: Objection, your Honor.

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2 THE COURT: Sustained. It's landlocked,
3 that's what litigation is all about.

4 You need access to the property over
5 this Oregon Road. Nature Conservancy feels you
6 should not have access. That's where it's at.
7 Now it's up to the people at 45 Monroe Place.

8 No further questions?

9 MR. BENOWICH: I do.

10 THE COURT: Mr. Benowich?

11 MR. BENOWICH: Thank you, your Honor.

12 CROSS-EXAMINATION

13 BY MR. BENOWICH:

14 Q. Mr. Goldman, when this lawsuit was started in
15 2006 were you working for the Trump Organization?

16 A. Yes.

17 Q. At that time did the North Castle parcel owned
18 by Seven Springs have access to what's called Oregon
19 Road to the north?

20 A. Yes.

21 Q. What happened after the lawsuit was commenced to
22 make this parcel landlocked, in your words?

23 A. Excuse me, let me amend my answer.

24 Q. Excuse me, can you answer my question, sir?

25 A. What happened before the lawsuit was commenced?

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2 Q. What was it that happened?

3 A. The Town of Bedford, based on its subdivision
4 regulations, stipulated in its approval process that we
5 could not have access to the North Castle portion
6 through the Bedford portion and that the private road
7 which was connecting to Oregon Road would be stopped at
8 the Bedford border.

9 In fact, Bedford insisted we did not have the
10 right to cross over that portion of Oregon Road.

11 Q. That's another suit in this case. Bedford
12 insisted that they have sort of what they call a
13 pertinent green belt to prevent traffic between Bedford
14 and North Castle as a condition of your organization
15 moving forward with the Bedford plan; isn't that right?

16 A. No. The condition was that until we clarified
17 our right to use Oregon Road they would forbid or
18 prevent through traffic.

19 Q. They insisted it would be covenant in the land
20 and in the deeds, isn't that right, that you would not
21 have access between the two towns; isn't that right,
22 sir?

23 A. No. |

24 Q. No? Are you familiar with the Town of Bedford
25 environmental impact statement?

1 H. GOLDMAN - CROSS - MR. BENOWICH

2 A. Thoroughly.

3 THE COURT: One person has to speak so
4 the Court Reporter can track what's going on.

5 MR. COHN: Your Honor, counsel is
6 cutting the witness' answer off.

7 Until the answer become inappropriate in
8 accordance with whatever the Court rules in that
9 regard, I ask that the witness be allowed to
10 answer.

11 THE COURT: Let him finish his answer.

12 MR. BENOWICH: Yes, your Honor.

13 THE COURT: If it's not responsive or
14 should be stricken, you can make an application.

15 MR. COHN: Can the witness finish his
16 answer?

17 THE COURT: What question is unanswered?

18 MR. BENOWICH: I wasn't -- we went
19 forward.

20 THE COURT: I'm asking the witness.

21 Was there an unanswered question?

22 THE WITNESS: Yes. The question that's
23 unanswered is the discussions the Town of Bedford
24 continued.

25 THE COURT: There was no question about

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2 discussions. The question was, are you familiar
3 with the findings of the Town of Bedford?

4 THE WITNESS: Yes.

5 THE COURT: You answered thoroughly.

6 Now, if he wants to know the extent of
7 your knowledge, he'll ask you more questions.

8 Q. The Trump Organization on behalf of Seven
9 Springs decided to go forward and obtain preliminary
10 subdivision approval of the plan in Bedford; isn't that
11 right?

12 A. Yes.

13 Q. And as a consequence of that there will be a
14 bar, barrier between traffic, of traffic between North
15 Castle and Bedford on Oregon Road; right?

16 A. Yes.

17 Q. Thank you.

18 Now, you said early in your testimony that it's
19 because of the stay or injunction issued by the
20 Appellate Division that you can't take heavy equipment
21 on the disputed portion of Oregon Road; isn't that
22 right, that's what you said earlier today?

23 A. Yes.

24 Q. Didn't you give a different statement when you
25 gave an affidavit to the Appellate Division on the

1 H. GOLDMAN - CROSS - MR. BENOWICH

2 hearing in connection with the hearing on the injunction
3 motion?

4 A. I don't know what you are referring to.

5 Q. Do you remember giving an affidavit and stating
6 in words or substance there that the Court didn't have
7 to worry about you using heavy equipment on the disputed
8 portion, because at the request of the Town of North
9 Castle you wouldn't be using such equipment?

10 Do you remember giving that statement in a sworn
11 affidavit?

12 A. Yes.

13 Q. How is it that something the town insisted you
14 not do, you are prevented from doing because of a later
15 Court Order?

16 A. I don't understand the question. Sounds like
17 you're referring to two different conversations.

18 Q. I did. In one of them you gave an affidavit
19 which you said -- why don't I just show it to you?

20 MR. BENOWICH: Your Honor, I apologize.

21 I have only one copy for the witness. Mine is a
22 little marked up, but --

23 THE COURT: Are you familiar with that
24 document, Mr. Cohn? I'm sure you are, it's a
25 submission on appeal.

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2 MR. COHN: I am. Maybe -- could I stand
3 next to the witness without communicating and read
4 it?

5 MR. BENOWICH: Judge.

6 THE COURT: No need for that. Show it
7 to the witness.

8 THE COURT OFFICER: Have it marked?

9 THE COURT: No. Show it to the witness.
10 It may eventually be marked.

11 A. What part of this are you referring to?

12 Q. Would you take a look and see if that's your
13 signature at the back on page eight?

14 A. Yes.

15 Q. This is your affidavit?

16 A. Yes.

17 Q. Do you remember giving this statement, paragraph
18 6, the third sentence? Do you see?

19 A. It was agreed, assuming there is no preliminary
20 injunction preventing such an action, Seven Springs
21 clear a pathway into its land with the least disturbance
22 of the land. At the request of the town we will not be
23 using heavy equipment.

24 Q. Now, it's that last sentence I want to focus
25 your attention on. This affidavit was given June 29th,

1 H. GOLDMAN - CROSS - MR. BENOWICH

2 do you remember that?

3 A. Yes.

4 Q. That's before the Appellate Division issues its
5 order granting an injunction; right?

6 A. Yes.

7 Q. So, as of the end of June you had discussions
8 with the Town of North Castle; is that correct?

9 A. Yes.

10 Q. And in those conversations you agreed you would
11 not be using heavy equipment to do whatever you would be
12 doing on the disputed portion of Oregon Road; is that
13 correct?

14 A. Yes, it is.

15 Q. What happened afterwards to change that?

16 A. Nothing, except --

17 Q. So then --

18 MR. COHN: Wait. He's not finished.

19 THE COURT: No. What happened?

20 Nothing. That's the answer.

21 MR. BENOWICH: He can't give a speech.

22 Q. As a result of your conversation with the town,
23 you on behalf of the Plaintiff, Seven Springs, had an
24 agreement that you would not be using heavy equipment on
25 the disputed portion of Oregon Road; right?

1 H. GOLDMAN - CROSS - MR. BENOWICH

2 A. No.

3 Q. Well, I don't know what your statement means.

4 A. It's not as a result of a discussion, it's the
5 rules of the SEQRA process. That's why we agreed.

6 Q. Why is it at the request of the town you
7 wouldn't be using the road? Why didn't you say that
8 under SEQRA we won't or we can't?

9 A. Because I would have preferred to use heavy
10 equipment for economic reasons and the town reminded me
11 that until SEQRA was finished we could do nothing but
12 clear the road and pave it to the point where we had at
13 least emergency access and I said, you're right and I
14 agreed.

15 Q. Precisely my point. It has nothing to do with
16 the injunction embargo on your ability to use heavy
17 equipment, but a preexisting condition because of SEQRA
18 and the stage of whatever planning and applications you
19 had on the North Castle project?

20 A. You're trying to confuse the Court by defining
21 heavy equipment. Your own terms.

22 Q. I'm not. You are the one that used it in your
23 affidavit and your testimony today, I submit.

24 A. Heavy equipment -- I am -- I'm confused.

25 THE COURT: Don't argue. Move on,

H. GOLDMAN - CROSS - MR. BENOWICH

1
2 please.

3 Q. You said here, plain English, not generating
4 revenue there?

5 A. That's correct.

6 Q. Is the property for sale?

7 A. We are not actively marketing. It will be for
8 sale.

9 Q. You don't have a contract to sell it, do you?

10 A. Not to my knowledge.

11 Q. Does anybody to your knowledge reside part-time,
12 full-time, weekends at the mansion?

13 A. The building is set aside for Mr. Trump's use.
14 He resides there, if he so chooses.

15 Q. It is occupied and may be used by Mr. Trump, if
16 he so chooses?

17 A. If he so chooses.

18 Q. So when you said that no one is living there,
19 what did you mean?

20 A. I mean no one is living there. No one has
21 occupied the house as their primary dwelling.

22 Q. You didn't say that in response to Mr. Cohn,
23 that it was the primary residence or not. The fact is
24 it's used by Mr. Trump if he desires?

25 A. If he desires. At the present time he does not.

1 H. GOLDMAN - CROSS - MR. BENOWICH

2 Q. How many homes does he have?

3 MR. COHN: Objection.

4 THE COURT: Sustained.

5 Q. Do you know if any of his sons lives there on
6 occasion?

7 MR. COHN: Objection.

8 THE COURT: It goes to the issue whether
9 this mansion is being used.

10 A. They do not live in that mansion, no.

11 Q. Do you know if any of his sons uses it at any
12 time?

13 A. Never. It's locked and can't be used by them.

14 Q. Not even if Mr. Trump says they can use the
15 house?

16 MR. COHN: Objection.

17 A. He says they cannot.

18 THE COURT: Move on. As far as he knows
19 it's not being used by any children. Move on.

20 Q. Now, after this action was commenced and the
21 complaint was initially dismissed, Seven Springs
22 organization withdrew the application it had pending in
23 North Castle; isn't that correct?

24 A. No.

25 Q. No?

1 H. GOLDMAN - CROSS - MR. BENOWICH

2 A. No. We abated it. We did not withdraw it.

3 MR. BENOWICH: If I may ask this be
4 marked?

5 Would you mark this as Defendant's
6 Exhibit A, please, letter dated August 10th from
7 Mr. Cohn's predecessor.

8 MR. COHN: Give them the year.

9 (Defendant's Exhibit A, one-page copy of
10 a letter to the North Castle Planning Board from
11 Mark Weingarten, dated 8/10/07, marked for
12 identification.)

13 Q. Mr. Goldman, have you ever seen Defendant's A
14 before?

15 A. No.

16 Q. Would you look down at the cc, especially the
17 one from the bottom?

18 A. Um-hmm.

19 Q. Do you see that?

20 A. Yes.

21 Q. Your name appear on that?

22 A. Yes.

23 Q. What's the law firm?

24 A. DeBello, Donnellan and Weingarten, Seven
25 Springs' counsel in its application to the planning

1 **H. GOLDMAN - CROSS - MR. BENOWICH**

2 board prior to Mr. Cohn's. It was a mistake,
3 inappropriate. That is why we fired them.

4 THE COURT: Excuse me. Answer the
5 question.

6 Did he say why did you fire them? He
7 didn't.

8 Ask that question again. Listen to the
9 question. If your counsel determines there needs
10 to be a follow up on any questions Mr. Benowich
11 asks, he will be given that opportunity so we can
12 move forward here.

13 Read the question back to the witness.

14 **(Reporter read back as requested.)**

15 Q. Let me rephrase.

16 Before Mr. Cohn was counsel for Seven Springs,
17 was the DeBello, Donnellan firm Seven Springs counsel
18 for this lawsuit?

19 A. Yes.

20 Q. Also the Seven Springs counsel in dealing with
21 North Castle?

22 A. Yes.

23 MR. BENOWICH: Your Honor, I ask that
24 Exhibit A be received in evidence.

25 THE COURT: Mr. Cohn?

1 H. GOLDMAN - CROSS - MR. BENOWICH

2 MR. COHN: No objection.

3 THE COURT: Have Defendant's A marked in
4 evidence .

5 (Defendant's Exhibit A received in
6 evidence.)

7 Q. Would you just read the second sentence of the
8 letter, sir?

9 A. Our client asked us to advise the planning board
10 they are hereby withdrawing the application made to the
11 planning board for approval of the subdivision of the
12 portion of the property that is within the Town of North
13 Castle.

14 Q. Thank you.

15 Did Seven Springs ever submit or resubmit a plan
16 for approval to North Castle?

17 A. The plan is still in submission.

18 Q. Have you submitted or resubmitted the plan for
19 North Castle's approval since August 10, 2007, sir?

20 A. No. The plan that was in submission at that
21 time is still pending.

22 Q. Even though it was withdrawn?

23 A. It was not withdrawn, the attorney made an
24 error.

25 Q. Even though your lawyer wrote --

1 H. GOLDMAN - CROSS - MR. BENOWICH

2 A. No longer --

3 MR. COHN: Objection, argumentative.

4 THE COURT: Look, you people are acting
5 like this is a matrimonial. This is a business
6 case. Act like professional business people or
7 I'll cut this hearing off and pick a number of my
8 own and you can go to Brooklyn and argue why I did
9 that.

10 Proceed, please.

11 Q. What applications has Seven Springs submitted to
12 North Castle since August 10, 2007?

13 A. We have not submitted any further application or
14 further processing under the application since the
15 restraining order was put in place.

16 Q. I didn't ask you that, sir. I asked you since
17 the date of the letter, which was August 10, 2007, a
18 little over four years ago?

19 A. We have not submitted any new material.

20 Q. And now, have you considered what will happen to
21 the North Castle project, as you loosely refer to it, if
22 the Appellate Division determines Seven Springs does not
23 have the rights over the disputed portions of Oregon
24 Road which you seek in this case?

25 A. Have I personally considered this?

1 H. GOLDMAN - CROSS - MR. BENOWICH

2 Q. Yes, sir.

3 A. No.

4 Q. You haven't thought about what would happen if
5 you lose the appeal?

6 A. No. It's my firm conviction we'll win it. Why
7 would I consider otherwise?

8 Q. Have you had discussion to that effect with any
9 one at North Castle?

10 A. No.

11 Q. I see. All right.

12 What is it you would like to bring on the
13 disputed area of Oregon Road that you can't?

14 A. I'm not sure that I understand the question.

15 Q. What is it that you would like to bring onto
16 Oregon Road, the portion that is in dispute under the
17 injunction, that you are not able to do today?

18 A. At what time?

19 Q. Today, sir.

20 THE COURT: Your question is assuming
21 there is no injunction. Is that what you mean?

22 MR. BENOWICH: Yes.

23 Q. What is it you would like, I'll call it Oregon
24 Road, can we do that?

25 A. Yes.

1 H. GOLDMAN - CROSS - MR. BENOWICH

2 Q. What is it you would like to bring onto Oregon
3 Road that you can't because of the Appellate Division's
4 injunction?

5 A. Some people and perhaps a couple of small
6 bobcats to clear the road of vegetation and make it
7 possible to drive, shall I say, cars and four wheel
8 drive vehicles, so my engineers can do the studies and
9 surveys and engineering to design the road.

10 One of differences in the ongoing application is
11 that we have to design Oregon Road as a new road to the
12 DOT and town standards.

13 Q. Do you have the right to do that even under
14 Court's order if it's upheld on appeal?

15 A. I'm not a lawyer, I can't answer that.

16 Q. You seem to have great familiarity with SEQRA
17 and you testified to managing litigation, why are you
18 unaware what you can and can't do to the road so
19 essential to a project that you claim is stalled?

20 A. I don't know what your question is and I don't
21 know what that speech was.

22 Q. What's a bobcat?

23 A. A bobcat is a piece of equipment, small, light,
24 which accepts an attachment for grading.

25 THE COURT: Mini backhoe.

1 H. GOLDMAN - CROSS - MR. BENOWICH

2 THE WITNESS: Excavation.

3 THE COURT: Mini backhoe.

4 THE WITNESS: Yes.

5 Q. You can have people walk up and down Oregon Road
6 now, can't you?

7 A. Yes.

8 Q. So other than not bringing a bobcat in to clear
9 the road, what can you not do?

10 A. I have not yet heard from my surveyor. We also
11 need a survey of the road and close out that survey as
12 part of the design.

13 Q. Hasn't he done a survey already?

14 A. Yes. He did a survey before the restraining
15 order. And I don't know by whom, but he did it and
16 twice his stakes and markers were torn up by someone.

17 Q. You don't know who?

18 A. No. I wasn't there.

19 Q. But you had a survey done. When was it done?

20 A. Part was done before I came with the company.
21 The other was done about five years ago.

22 Q. So you haven't had a survey done since what,
23 2006? That's when the case was started, right?

24 A. Best of my knowledge.

25 Q. Have you had a survey done since the case was

1 H. GOLDMAN - CROSS - MR. BENOWICH

2 started in May or June 2006?

3 A. I don't know. I don't remember that.

4 Q. You don't know or you don't remember one was
5 done?

6 A. Since I don't remember, I also do not know.

7 Q. You've been running this project since you came
8 into the firm, right?

9 A. Yes.

10 Q. How long would it take to clear Oregon Road in
11 order to do the surveys and studies that you want to do?

12 A. Depending what we found, might take from a
13 couple of weeks to several weeks.

14 Q. Now, the Court's decision was issued in May and
15 the injunction was issued in late June.

16 Did you take any steps before that injunction
17 was issued to do any of the things you say you're not
18 now free to do?

19 A. I don't know the question.

20 Q. Did you do anything between the time of Judge
21 Nicolai's decision and the time the Appellate Division
22 issued a temporary injunction, which you say you can't
23 now do because of the injunction?

24 MR. COHN: Objection.

25 THE COURT: I'll allow.

1 H. GOLDMAN - CROSS - MR. BENOWICH

2 MR. COHN: May I?

3 THE COURT: Yes.

4 MR. COHN: Mr. Benowich miss spoke.

5 It's a highly technical aspect. If he changes his
6 question to judgment, instead of discussion.

7 THE COURT: Judgment entered?

8 MR. COHN: That's correct.

9 MR. BENOWICH: That's not my question.

10 MR. COHN: Well, okay.

11 Then I object to the question because on
12 the decision it was still, there was still Judge
13 Rory Bellantoni's --

14 MR. BENOWICH: He can answer yes or no.

15 That's all it is.

16 THE COURT: I don't believe, Mr.

17 Benowich, that after the decision of the Court is
18 in play, that authorized these people to go on
19 there and start doing work the property.

20 MR. BENOWICH: I agree. That's the
21 position we took years ago. That's why we needed
22 an injunction.

23 I'm still free to ask him without
24 counsel saying why he did or he didn't.

25 THE COURT: You can't make an issue of

1 H. GOLDMAN - CROSS - MR. BENOWICH

2 somebody not doing something when they haven't
3 been authorized to do it.

4 MR. BENOWICH: Then he was never free to
5 do it. The judgment wasn't entered until after
6 the injunction was issued.

7 THE COURT: Right. That's agreeable, I
8 accept that.

9 MR. BENOWICH: If that's your Honor's
10 point.

11 THE COURT: My position is, I'll put it
12 for the record, is that they are not entitled to
13 go on the land and do anything until there is a
14 judgment entered, because first he has to submit
15 judgment. The other side has an opportunity to
16 submit a counter judgment if they don't agree and
17 the Court has to decide what the judgment has to
18 be and the judgment is entered. And once it's
19 entered, the parties know where they have to go
20 from there.

21 Proceed.

22 Q. After the Judge's discussion about the judgment,
23 I'm speaking carefully, after the Judge's decision, did
24 you have a discussion with anyone representing North
25 Castle with respect to Seven Springs' intention to

H. GOLDMAN - CROSS - MR. BENOWICH

1
2 proceed with anything in North Castle?

3 A. Yes.

4 Q. When was that and with whom did you speak?

5 A. I don't have a date. It was with the town
6 supervisor, town attorney and town director of planning.

7 Q. Can you tell me essentially what you told them?

8 A. I told them we would like to go ahead on the
9 basis of our victory in the Court below, which is
10 actually this Court, to clear the roadbed sufficient to
11 be able to begin the study we needed to do to resume
12 SEQRA.

13 Q. Your affidavit establishes that they either told
14 you or reminded you you weren't free to use heavy
15 equipment.

16 Did you understand the bobcat to be heavy
17 equipment for purposes of that discussion?

18 A. Absolutely not. We are talking about a D9
19 caterpillar.

20 Q. You consider yourself, that is Seven Springs, is
21 free to use a bobcat, notwithstanding that decision?

22 A. So did they.

23 MR. BENOWICH: Move to strike, your

24 Honor.

25 THE COURT: That's fair.

H. GOLDMAN - CROSS - MR. BENOWICH

1 Q. Who told you you could do that?

2 A. Town attorney, town supervisor, director of
3 planning.

4 Q. What else did they tell you?

5 A. They said in accordance with SEQRA we could not
6 or we should not make any significant alterations to the
7 profile of the land. Since we were working on a
8 preexisting roadbed, that's not a problem.

9 Q. I only asked what they told you, sir.

10 A. That's what they told me.

11 Q. Have you had discussions with North Castle since
12 the Appellate Division injunction has been entered?

13 A. No.

14 Q. Do know about it to your knowledge?

15 MR. COHN: Objection to what they know.

16 Q. To your knowledge?

17 THE COURT: I'll allow.

18 Q. Did you tell any of your correspondents at North
19 Castle about the injunction?

20 A. No.

21 Q. Why not?

22 A. Why would I do that?

23 Q. If you had a plan that was only -- withdrawn.

24 You recently had a discussion about proceeding
25

1 H. GOLDMAN - CROSS - MR. BENOWICH

2 under SEQRA. One might think you intended to pursue the
3 plan. If you were subject to injunction why wouldn't
4 you tell them I would like to, I can't?

5 A. Town attorney called me and said oh, my God. I
6 see I just got the injunction.

7 Q. Why was it that you were so caustic with me
8 about why would you call them when all you had to do was
9 say --

10 THE COURT: Mr. Benowich, please.

11 Please.

12 MR. COHN: Thank you, your Honor.

13 Q. Who is the town attorney, Mr. Veroni (ph.)?

14 A. Roland Veroni (ph).

15 Q. What did you say?

16 A. He said he had no idea why it was that the
17 injunction was continued by the Appellate Division.

18 Q. What did he say?

19 A. I said, I know and he said -- is this hearsay if
20 I say what he said?

21 THE COURT: That's not up to you to

22 decide.

23 A. He said it was terrible thing. He didn't
24 understand why the Appellate Division did that and he
25 wished it hadn't happened, wished us good luck in

1 H. GOLDMAN - REDIRECT - MR. COHN

2 overturning it.

3 MR. BENOWICH: I have no further
4 questions.

5 THE COURT: Redirect?

6 MR. COHN: Thank you, your Honor.

7 REDIRECT EXAMINATION

8 BY MR. COHN:

9 Q. First of all, the significant alteration of the
10 land that you indicated could not be done, was that part
11 of the ongoing application?

12 A. Yes.

13 Q. In fact, was the application withdrawn or using
14 the term you used, was it temporarily abated?

15 MR. BENOWICH: Objection.

16 THE COURT: I'll allow he's leading the
17 witness, but I'll let him do it.

18 A. The answer is fairly conclusive. It was put in
19 abeyance and when we had our conversations with the
20 town, as far as settlement agreements, they agreed not
21 only that they would resume the process as it stood, but
22 that in accordance with the appropriate section of SEQRA
23 we will maintain and have the use of, full credit for
24 all of the 5,000 pages of data and studies that were in
25 place when we abated the study and --

1 H. GOLDMAN - REDIRECT - MR. COHN

2 MR. BENOWICH: Objection.

3 A. -- we'll pick up from that point.

4 THE COURT: Simple process. Mr.
5 Benowich is relying on a letter. He disputes. He
6 uses word the withdraw, he uses abated. Alleviate
7 that.

8 Move on. It's not going to decide this
9 issue.

10 Q. Mr. Benowich used the term relative to land up
11 above, quote/unquote, as a consequence there was a bar;
12 do you recall that?

13 A. I do.

14 Q. What is that?

15 A. It is stipulation in the findings and in the
16 preliminary approval that we can't use a road for
17 through traffic from Bedford into North Castle until
18 such time as we have a road in North Castle which has
19 its own primary access to the south. And at that time
20 they are committed to connecting the road and allowing
21 through traffic.

22 Q. In connection --

23 MR. BENOWICH: Objection, your Honor.

24 Best evidence. What counsel is leading his
25 witness through is contained in writings and

1 H. GOLDMAN - REDIRECT - MR. COHN

2 written documents and this witness' recollection
3 without the documents is hearsay. No foundation.

4 THE COURT: Mr. Benowich, you opened the
5 door.

6 MR. BENOWICH: I did and I have the
7 documents, counsel does not. And he is reading
8 from his memory, rather than from an agreement and
9 we'll be happy to go through it, but there is
10 wrong --

11 THE COURT: I'm not going to require him
12 to go through it. I'm overruling the objection.

13 Proceed, Mr. Cohn, wrap this up.

14 Q. In connection with the SEQRA process on the
15 land, as opposed to the road on your land, Seven Springs
16 land, are there any holes that have to be dug in
17 connection with that process?

18 MR. BENOWICH: Process. Objection.

19 THE COURT: I'm sustaining the
20 objection. You have SEQRA. Whatever it is, it
21 is.

22 Q. That kind of activity can't be conducted on the
23 land because the stay is now in place?

24 A. A large number of investigations having to do
25 with sewage, storm water control, water supply,

1 **H. GOLDMAN - RECROSS - MR. BENOWICH**

2 vegetation, maintenance of lawns, planting, traffic and
3 several others which I --

4 THE COURT: They can't go forward with
5 doing the work necessary to develop this property
6 so they can subdivide it and build houses.

7 THE WITNESS: Could not have possibly
8 said it better.

9 THE COURT: Storm water has to be
10 controlled. That's standard work that's done when
11 we have a large development with many acres on it
12 like this.

13 THE WITNESS: Precisely so.

14 MR. COHN: No further questions.

15 THE COURT: Recross, Mr. Benowich?

16 MR. BENOWICH: Just a little, your
17 Honor.

18 Can I mark this? I don't have a copy.
19 I'm happy to show counsel.

20 (Findings statement, Seven Springs,
21 Final dated 6/3/09, marked for identification.)

22 **RECROSS-EXAMINATION**

23 **BY MR. BENOWICH:**

24 Q. Take a look at this and tell me if you've ever
25 seen it before?

1 H. GOLDMAN - RECROSS - MR. BENOWICH

2 A. Yes.

3 Q. Do you know what it is?

4 A. Yes.

5 Q. Can you tell me what it is?

6 A. It is the findings statement for our SEQRA
7 process in the Town of Bedford.

8 MR. BENOWICH: Ask that it be received
9 as exhibit B, your Honor.

10 MR. COHN: Well, your Honor, their
11 application is for North Castle, not Bedford.

12 THE COURT: There may be an issue. If
13 I'm incorrect, someone can explain.

14 It's my understanding, it's the witness'
15 understanding at some point Bedford will allow
16 traffic from North Castle through Bedford and Mr.
17 Benowich contests that ultimate conclusion; is --
18 that fair?

19 MR. BENOWICH: That's right, Judge.

20 Two very quick questions I'll ask about
21 this document.

22 THE COURT: Why don't we, one page you
23 can look at.

24 MR. BENOWICH: Actually page two and on
25 page 21.

1 **H. GOLDMAN - RECROSS - MR. BENOWICH**

2 THE COURT: Deemed in evidence, limited
3 to the two areas. Mr. Benowich is going to
4 question on page two and page 21.

5 MR. COHN: I would just ask, I'm sure
6 the Court will give it to me, one or two
7 questions, whether there is anything else of
8 relevance that may contradict whatever Mr.
9 Benowich elicited.

10 THE COURT: I'll deal with the
11 application when made.

12 Q. Look at the top, very top of page two. Do you
13 see?

14 A. Um-hmm.

15 Q. There is a finding made by Bedford, right?

16 A. Yes.

17 Q. And could you read the finding, the very top of
18 page two?

19 A. Withdrawal by the applicant, all applications to
20 the Town of North Castle August 10, 2007.

21 Q. Did you ever tell Bedford that finding was
22 incorrect?

23 A. Yes.

24 Q. How did do you that?

25 A. When I received the findings I called the

H. GOLDMAN - RECROSS - MR. BENOWICH

1
2 director of planning and I told them that that finding
3 was incorrect.

4 Q. When was that?

5 A. Sometime the second week in June.

6 Q. Which year?

7 A. '09, after their finding statement was made.

8 Q. Did you write them a letter?

9 A. No.

10 Q. You just called them?

11 A. Yeah.

12 Q. Look at page 21, fourth full paragraph?

13 MR. BENOWICH: Your Honor, I can ask the
14 witness to read. Since it's in evidence, I can
15 read it, perhaps somewhat more slowly.

16 THE COURT: Go ahead.

17 MR. BENOWICH: This is the fourth
18 paragraph on page 21.

19 Quote: The applicant has agreed that
20 the new road will not be extended or used for
21 access to the North Castle portion of the site,
22 except for access to the existing estate home.

23 If in the future the North Castle
24 portion of the site is developed with a primary
25 access from North Castle, the Bedford planning

1 **H. GOLDMAN - RECROSS - MR. BENOWICH**

2 board may grant an amended subdivision approval,
3 specifically permitting the connection, to create
4 a through road. The other scenarios would violate
5 Town of Bedford regulation for dead end roads.

6 This agreement will be a covenant in the
7 recorded declaration of the homeowner's
8 association that will be formed by the applicant.
9 End of quote.

10 MR. COHN: Is there a question?

11 THE COURT: He hasn't finished. He read
12 it, now he's going to ask the question.

13 Q. Was there an agreement that you will not have a
14 through road between North Castle and Bedford?

15 THE COURT: That's not what it says.

16 A. This is a finding statement, not an agreement.

17 Q. This reflects an agreement.

18 You didn't have permission to build a through
19 road until two things at least happened, you got
20 permission of North Castle and you went back for
21 permission from Bedford; isn't that correct?

22 MR. COHN: Objection. It's entirely
23 consistent. It's not impeachment.

24 THE COURT: I'll allow.

25 MR. COHN: That's not what it --

1 H. GOLDMAN - RECROSS - MR. BENOWICH

2 THE COURT: I'll allow. He's asking
3 this witness if that's what it was, if that's what
4 it says.

5 THE WITNESS: That's what it says.

6 Q. That was your agreement with Bedford?

7 A. The word agreement is improper. It's a finding
8 statement, it is not an agreement. It's a document
9 issued by the town, written by the town.

10 This particular paragraph is now being discussed
11 as part of a final approval and is going to be
12 completely rewritten.

13 THE COURT: Sustained. That's stricken.

14 He's right, Mr. Benowich, it's not an
15 agreement. It's a finding by the town board,
16 which places restrictions and conditions upon
17 further action.

18 MR. BENOWICH: With all respect, the
19 first four words of this are applicant has an
20 agreement.

21 THE COURT: Agreed to the findings, not
22 the ultimate conclusion.

23 Q. Was this paragraph accurate?

24 A. Not in the first four words. We didn't agree it
25 was required of us.

1 H. GOLDMAN - RECROSS - MR. BENOWICH

2 Q. Did you call the planning --

3 THE COURT: We're making a non issue.
4 They can not have a through road until the two
5 conditions precedent founded in that findings are
6 met and permission from the two communities.

7 No further questions?

8 The language isn't a permanent bar to a
9 through road.

10 MR. BENOWICH: It is until he gets
11 permission.

12 THE COURT: Exactly. He has no
13 permission. At this point he has to seek
14 permission and meet certain conditions when he
15 seeks permission.

16 MR. COHN: Includes winning the case.

17 THE COURT: I don't know.

18 Move on. Do you have any questions for
19 this witness?

20 MR. COHN: No, your Honor.

21 THE COURT: Very good.

22 You are finished, Mr. Goldman. Am I
23 right? I remembered your name. That doesn't
24 always happen to everybody. You may step down.

25 (Witness left the stand.)

1 J. McCONNEY - DIRECT - MR. COHN

2 THE COURT: B will be marked in
3 evidence.

4 (Defendant's Exhibit B received in
5 evidence.)

6 (Recess.)

7 (Plaintiff's Exhibit 30, Seven Springs
8 Expense Projection, ending 7/31/12, marked for
9 identification.)

10 THE COURT: Mr. Cohn, are you ready to
11 call your next witness?

12 MR. COHN: Yes.

13 THE COURT: Please proceed.

14 MR. COHN: Plaintiff calls Jeff
15 McConney.

16 (Witness took the stand.)

17 THE COURT OFFICER: Raise your right
18 hand.

19 Do you swear the evidence you are about
20 to give in the matter before this Court will be
21 the truth, the whole truth and nothing but the
22 truth, so help you God?

23 THE WITNESS: Yes.

24 THE COURT OFFICER: Be seated. State
25 your full name and address.

1 *J. McCONNEY - DIRECT - MR. COHN*

2 THE WITNESS: Jeffrey McConney, 390
3 First Avenue, New York, New York.

4 THE COURT: Spell your last name.

5 THE WITNESS: M-C-C-O-N-N-E-Y.

6 THE COURT: M C capital C?

7 THE WITNESS: Yes, sir.

8 THE COURT: Proceed.

9 **DIRECT EXAMINATION**

10 **BY MR. COHN:**

11 Q. Mr. McConney, by whom are you employed and in
12 what capacity?

13 A. Comptroller, Trump Organization.

14 Q. How long have you been in that capacity?

15 A. Little over 24 years.

16 Q. And in the briefest terms, what is your
17 background in relation to the duties you perform at the
18 Trump Organization as comptroller?

19 A. Background, graduated from Baruch College in
20 1978. Worked for a CPA firm for nine years, then worked
21 for Mr. Trump taking care of the day-to-day operations
22 of the whole organization. On the accounting side of
23 operations; development, marketing, I take care of the
24 accounting side.

25 Q. On the accounting side were you requested to do

1 *J. McCONNEY - DIRECT - MR. COHN*

2 an expense projection in relation to this operation?

3 A. Yes.

4 Q. I show you what is Exhibit 30 for
5 identification.

6 THE COURT: 30, 3-0?

7 MR. COHN: 30.

8 A. Yes. That's the projection that I prepared
9 along with my accounting department.

10 MR. COHN: Your Honor, opposing counsel
11 has a copy of all the exhibits we had premarked.
12 We'll try to move along as best we can.

13 THE COURT: That's marked for
14 identification. Offered in evidence?

15 MR. COHN: Yes. I'm going to offer it
16 in evidence.

17 MR. BENOWICH: I have an objection, your
18 Honor.

19 This is plainly a summary prepared for
20 litigation. I don't know if the stack that I was
21 given today is background that you have or not.
22 Certainly without that representation and
23 authentication, knowing what this includes, I
24 can't agree to putting it in.

25 THE COURT: Let me see the document,

1 *J. McCONNEY - DIRECT - MR. COHN*

2 please.

3 I'm going to sustain the objection
4 without prejudice to you, Mr. Cohn, to lay a
5 stronger foundation for the admission of this
6 document.

7 MR. COHN: Thank you.

8 Q. Mr. McConney, you brought certain financial
9 records here today that have been premarked, as I
10 believe, 1 through, give it to you, 1 through -- the
11 records are, let's say 30; have you not?

12 A. Yes.

13 Q. How, if at all, do these records -- could you
14 give us a brief description, what's in these folders,
15 let's say 1 through 28, or whatever they are, for
16 identification?

17 A. We used them as a basis for coming up with the
18 bulk of the expenses for the first seven months of costs
19 to run the Seven Springs property.

20 The folders in front of you are the invoices
21 paid by Seven Springs, LLC operational administration
22 repairs.

23 Q. When you took those, they were for what period?
24 How long a period?

25 A. From January through July, 2011.

J. McCONNEY - DIRECT - MR. COHN

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2 Q. Seven months?

3 A. Correct.

4 Q. How, if at all, did you extrapolate those?

5 A. We analyzed invoices and extrapolated the next
6 12-month period as budget, any other budget.

7 Q. In relation to Exhibit 30 for identification,
8 how, if at all, do the other exhibits within the folders
9 on the table in front of you, 1 through 28 or 29, how do
10 they relate to Exhibit 30?

11 MR. BENOWICH: Objection.

12 THE COURT: I'll allow it.

13 A. The folders in front of you, I don't have the
14 exact exhibit number, page four, exhibit 30, is a
15 listing of the expenses for Seven Springs; okay?

16 THE COURT: You use the word expenses.

17 Expenses from January through July, 2011.

18 THE WITNESS: Two columns. First marked
19 2011, actual seven months, invoices paid by Seven
20 Springs, LLC.

21 Next column, projected. We extrapolated
22 then numbered the next 12-month period, everything
23 2011. Seven months column bills are one of the
24 exhibits in front of you.

25 Q. One of those folders?

J. McCONNEY - DIRECT - MR. COHN

1
2 A. One of those folders.

3 Q. And so in effect 30 is a summation of the bills
4 in the folders?

5 A. Correct.

6 Q. As shown on the seven months column, actually?

7 A. Correct. In addition to that, a few folders,
8 one is for real estate, one for insurance, which are in
9 the summary. Not the back page, but in back of the
10 projection for real estate taxes and insurance.

11 Q. By way of example, the real estate taxes, first
12 page under direct expenses, that would be Exhibit 1 for
13 identification?

14 A. I don't have the Exhibit Number here. There is
15 a copy of real estate tax bills for the next calendar
16 and fiscal years.

17 MR. COHN: I'm representing Exhibit 1
18 for identification, real estate taxes, and by way
19 of example, Exhibit 27, second from the end, first
20 page, general insurance.

21 Q. Do the exhibits, do you intend to demonstrate to
22 the Court that the exhibits marked for identification,
23 those folders key into the various expenses elicited on
24 Exhibit 30?

25 A. Yes.

J. McCONNEY - DIRECT - MR. COHN

1
2 Q. Is Exhibit 30 a list of those expenses?

3 A. Yes.

4 MR. COHN: Your Honor, I offer those at
5 this time.

6 THE COURT: Mr. Benowich, do you intend
7 to question the fact that the numbers on what's
8 been marked for identification as Exhibit 30
9 reflects the bills that are in the folders?

10 If you want to go through those folders
11 you can, but it's on your clock, not mine.

12 MR. BENOWICH: Two things. One is I
13 don't know what bills. We haven't had discovery.
14 I got in this morning. I'm going to assume if
15 they say a bill is shown as being paid and is
16 supposed to be in the folder, then it's there, for
17 the moment.

18 The problem is this gentleman talked
19 about the Seven Springs project, which we know and
20 I know from looking at the first folder is not
21 North Castle, which is the subject of your Honor's
22 inquiry.

23 We've established if there is any impact
24 on the Bedford plan which has been approved it's
25 voluntary. They want to hold onto that to see

1 *J. McCONNEY - DIRECT - MR. COHN*

2 what they get. That's not the result of the
3 injection -- for example, I'm looking at the
4 bills, the real estate bill folder. I see bills
5 that are not from North Castle, so to the extent
6 that this summary, Exhibit 30, purports to be
7 broader, it's one of my bases for objection. To
8 the extent that it's broader than North Castle, I
9 object as irrelevant and, you know, it's not what
10 we're here about.

11 MR. COHN: We intend to show that there
12 are various allegations which bring it down to
13 figures that represent, for this witness'
14 testimony, the North Castle property. If there
15 are other bills --

16 THE COURT: I'll allow, Mr. Benowich.
17 The argument goes to the weight, rather than
18 admissibility.

19 I'll admit, subject to whatever
20 information you want to establish.

21 Mr. Cohn, have Exhibit 30 marked in
22 evidence.

23 MR. BENOWICH: Can it be received
24 subject to connection with each of the items in
25 the folders, because without having gone through

1 **J. McCONNEY - DIRECT - MR. COHN/VOIR DIRE**

2 that, it's prejudicial to me to assume, as I did
3 for the purpose of the argument with the Court.

4 THE COURT: Yes.

5 MR. BENOWICH: Everything is in here.

6 THE COURT: You will be given the
7 opportunity to review the claimed supporting
8 documentation and question this witness at some
9 point, if you wish, if you believe there is
10 something in the supporting documentation that
11 does not support the numbers in the exhibit.

12 I understand your argument. The exhibit
13 as submitted, their point is it's for the entire
14 project. And whether or not that's relevant on
15 the issue of what damages there are by blocking
16 the enjoining use of Oregon Road, North Castle is
17 another issue.

18 MR. BENOWICH: May I have one voir dire,
19 one line?

20 THE COURT: Yes.

21 **VOIR DIRE**

22 **BY MR. BENOWICH:**

23 Q. Sir, looking at Exhibit 30, first debt service,
24 \$5,800?

25 A. Yes.

1 *J. McCONNEY - DIRECT - MR. COHN/VOIR DIRE*

2 Q. Do you have the folder for the mortgages?

3 A. No. I didn't bring the folder for the
4 mortgages.

5 Q. What's this number based on?

6 A. 12 monthly mortgage payments.

7 Q. By whom?

8 A. Seven Springs, LLC.

9 Q. To whom?

10 A. The bank.

11 Q. Are the payment checks for payment of the
12 mortgages here?

13 A. No.

14 MR. BENOWICH: The checks aren't here.

15 I renew my objection to this.

16 THE COURT: Mr. Benowich, it goes to the
17 weight this witness, the comptroller who pays the
18 bills, under oath testified they made those
19 payments.

20 MR. BENOWICH: He may well have mailed
21 the payments, but I am entitled to, before this
22 comes in as a summary of the payments that he
23 claims were made, to have the documents in court
24 that are not in court.

25 I will represent to the Court that I

1 *J. McCONNEY - DIRECT - MR. COHN/VOIR DIRE*

2 have had a title search done and there is
3 \$8 million of debt on this property as of July of
4 this year. I don't know how you could get a
5 \$580,000 mortgage when those are the only two
6 mortgages on the property, so I renew my
7 objection.

8 THE WITNESS: Can I say something?

9 THE COURT: I'm allowing. Objection
10 overruled. Ask further questions on cross.

11 Mr. Cohn, proceed, please.

12 THE COURT: Refresh my recollection.
13 You're asking for production of the mortgage
14 checks?

15 MR. BENOWICH: If he has them I would
16 like to see them. I don't think a summary can
17 come in.

18 THE COURT: Mr. Benowich, are you asking
19 for the mortgage checks? One or two words. Yes
20 or no?

21 MR. BENOWICH: If it's in evidence, I
22 would like them.

23 THE COURT: Very well. Get those
24 mortgages checks, make copies. See that Mr.
25 Benowich gets them. Once Mr. Benowich gets them,

1 J. McCONNEY - DIRECT - MR. COHN

2 I'll reserve, if he wants to review. Move on.

3 (Plaintiff's Exhibit 30, expense
4 projection ending 7/31/12, received in evidence.)

5 DIRECT EXAMINATION

6 BY MR. COHN:

7 Q. We're getting ahead of ourselves. Since it was
8 raised, since the mortgage checks are not here are,
9 there checks totalling 579, 420?

10 A. On the last page of Exhibit 30, which says
11 expense projection, it has a list of administrative
12 operating repairs and maintenance. The column says
13 2011, actual seven months.

14 Those are the bills in front of you, the paid
15 bills through January -- through July, 2011, the numbers
16 used for the projection, which are on the summary,
17 expense projection on the summary, which is the first
18 page of the exhibit, which is the projection for the
19 next 12 months debt service. Payments are for the next
20 12 months.

21 Q. In fact, 575 is higher than the checks that you
22 have for the seven months; is that correct?

23 A. Correct. It would be 12 payments instead of
24 seven.

25 Q. Is this entirely for the property at issue?

1 *J. McCONNEY - DIRECT - MR. COHN*

2 A. Yes.

3 Q. The North Castle property or does it include
4 other properties?

5 A. Seven Springs, LLC. It's only by Seven Springs,
6 LLC. Seven Springs, LLC to the lender, whatever
7 property is owned by Seven Springs, LLC.

8 THE COURT: Do they own any other
9 property, other than the property that is
10 contained in the three towns; Bedford, North
11 Castle, New Castle?

12 THE WITNESS: No, sir.

13 Q. Whatever expenses, sir, appear on Exhibit 30,
14 what is the plan, if any, for defraying those expenses
15 in connection with this property?

16 Is there a plan for defraying those expenses?

17 MR. BENOWICH: Objection.

18 THE COURT: What does that mean, framed?

19 MR. COHN: Defraying.

20 THE COURT: Defraying I'll allow.

21 A. When the project -- I'm not a lawyer -- when the
22 project is approved and becomes condominiums the
23 homeowners' association will then pay real estate taxes,
24 salaries, repairs, maintenance, snow removal expenses.
25 What we're referring to, now Mr. Trump is funding out of

J. McCONNEY - DIRECT - MR. COHN

1
2 his pocket. That will be stopped when the mortgage
3 payment is paid off through the sale of some units;
4 general insurance, expenses, repairs, maintenance,
5 operating expenses will all be paid by the condominium
6 association.

7 Q. Then, sir, what we're seeking here is if the
8 stay, hypothetically if the stay is prolonged, this
9 property's expenses are prolonged for one year, is that
10 the projection?

11 A. Yes, sir.

12 Q. What, if anything, is lost opportunity costs?

13 MR. BENOWICH: Objection.

14 THE COURT: I'll allow him to explain
15 it.

16 A. Right now Mr. Trump is funding this project to
17 the tune of 3 million or whatever million dollars per
18 year he's losing the opportunity to spend that on
19 another project, to buy another golf course, another
20 piece of undeveloped land he may be able to make more
21 money on. So, at this time, the rates of return are
22 forgone by choosing to put funds in one property as
23 opposed to another.

24 MR. BENOWICH: Objection, your Honor,
25 irrelevant. Mr. Trump is not the Plaintiff. He

1 *J. McCONNEY - DIRECT - MR. COHN*

2 may be the deep pocket behind it, but Plaintiff is
3 Seven Springs, LLC.

4 THE COURT: Sustained. Strike that
5 answer from the record.

6 Q. Okay. What are the lost opportunity costs in
7 relation to Seven Springs, LLC?

8 MR. BENOWICH: Objection.

9 THE COURT: I'm allowing that.

10 A. Seven Springs, LLC if this project went forward
11 are condominium sales from housing sales.

12 THE COURT: Off the record.

13 **(Discussion off the record.)**

14 MR. COHN: He's not a lawyer. I don't
15 want to lead him.

16 Q. We do want to be correct. We are selling homes.
17 It's a homeowner's association. There is no secret
18 here. Rather than prolonging, instead of condominium,
19 you are referring, in effect, apologize to counsel, to a
20 homeowner's association?

21 A. Yes.

22 Q. You say these costs, taking over, are the
23 projected homeowner's association?

24 A. Yes.

25 Q. Now, what are the lost opportunity costs? Make

1 *J. McCONNEY - DIRECT - MR. COHN*

2 it brief.

3 What are the lost opportunity costs incurred at
4 Seven Springs, are they paying these expenses?

5 A. The current expenses?

6 Q. When you said Mr. Trump, you meant Seven
7 Springs?

8 MR. BENOWICH: Objection.

9 THE COURT: Sustained.

10 Q. Okay. What are the lost opportunity costs to
11 Seven Springs in the briefest of terms?

12 A. If the project is not going forward, if we're
13 not selling homes, we're not deriving revenue.

14 One of our primary businesses is to sell homes.
15 If we can't sell the homes, then we're losing that
16 money.

17 Q. Future profits?

18 A. Yes.

19 MR .BENOWICH: Objection.

20 Q. In your figure, sir, is there any calculation
21 made or requested to this Court in connection with this
22 application for lost opportunity costs?

23 A. No.

24 MR. BENOWICH: Move to strike the whole
25 thing as counsel established, it's irrelevant.

1 *J. McCONNEY - DIRECT - MR. COHN*

2 MR. COHN: Not irrelevant.

3 THE COURT: I'm allowing. Goes to the
4 weight.

5 Please proceed.

6 Q. Now, in connection with real estate taxes,
7 Exhibit 1, for identification, the figure on Exhibit 30
8 is 411825. Is that -- are the bills there for more than
9 one property? Are they for the North Bedford and New
10 Castle properties?

11 A. It's for all three properties, North Castle, New
12 Castle, Bedford properties.

13 Q. Has there been an application to bring it down
14 to this subject property?

15 A. It's for all three towns, taxes for the whole
16 property, three towns.

17 Q. And that's the 411825?

18 A. Correct.

19 Q. You made that projection?

20 A. There is 2011 paid bills and the fiscal year of
21 school which is 2010, 2011.

22 THE COURT: Just so that I understand
23 fully what we're talking about, you indicated
24 there was nine homes in Bedford and now we're
25 dealing with the North Castle property. Any

J. McCONNEY - DIRECT - MR. COHN

1
2 development in New Castle, happens to be a little
3 bit of land here? Do we know? Anybody know? Are
4 there any homes plans for New Castle, Town of
5 Bedford?

6 Town of North Castle is the subject
7 property here, Oregon Road, North Castle and you
8 talk about some of this property being in the Town
9 of New Castle.

10 MR. COHN: We just opened an application
11 for New Castle.

12 THE COURT: We don't know where we stand
13 with regard to New Castle. Maybe some future
14 development, New Castle at some point.

15 MR. COHN: That's correct.

16 THE COURT: Proceed.

17 Q. When I relate to the subject property, I'm
18 talking about North Castle, all right?

19 Now, what are the indirect expenses, first page
20 of 30?

21 A. Two types of expenses. The easy ones are
22 direct, which apply directly to the real estate taxes,
23 maintenance, payroll, repairs and maintenance to the
24 property.

25 Indirect expenses are corporate expenses that

1 *J. McCONNEY - DIRECT - MR. COHN*

2 are not directly attributable to it. We allocate a
3 percentage to that property, because the work is done on
4 it exclusively, people working on it, like myself.

5 Q. Where is the administration of property done
6 from or performed from what location?

7 A. 725 Fifth Avenue.

8 Q. And what percentage of allocation to the
9 indirect expenses of that office have you made relative
10 to Seven Springs?

11 A. Ten percent.

12 Q. So these figures represent ten percentage
13 allocation for a period of one year; is that correct?

14 A. On the payroll and payroll tax side we went
15 through the individual duties.

16 We didn't take every single employee at the
17 Trump Organization that works there. We analyzed what
18 they did what they related to the Seven Springs property
19 and took ten percent of their property and business
20 corporate overhead. Ten percent of the rent, insurance,
21 telephone bill.

22 Q. How much did that come to in total?

23 A. \$1,056,900.

24 Q. Let's get to the real estate, 411825. That's
25 Exhibit 1?

1 J. McCONNEY - DIRECT - MR. COHN/VOIR DIRE

2 A. Yes.

3 MR. COHN: I offer it, your Honor.

4 THE COURT: Show it.

5 MR. COHN: Mr. Benowich has it.

6 MR. BENOWICH: This is the same thing?

7 MR. COHN: Yes.

8 MR. BENOWICH: Voir dire, your Honor?

9 THE COURT: Yes.

10 VOIR DIRE

11 BY MR. BENOWICH:

12 Q. Do you mind if I stay back here, is that okay?

13 You said these are bills for 2010, issued by New
14 Castle, North Castle and Bedford; is that right?

15 A. Correct.

16 Q. And why did you include New Castle and Bedford
17 in this package?

18 A. Going back to the homeowner's association, these
19 expenses will be around until the homeowner's
20 association begins and real estate taxes will not be
21 paid by Seven Springs, LLC, but by the individual
22 homeowners, which are these taxes.

23 Q. Are you being required to pay them by reason of
24 the injunction?

25 A. I'm not a lawyer, I can't answer that question.

STIPULATION

1
2 Q. Would any of these taxes have -- withdrawn.

3 Would you have been able to stop paying any of
4 these taxes if the injunction had not been issued?

5 A. Not to my knowledge.

6 Q. These taxes have to be paid, regardless of the
7 injunction?

8 MR. COHN: Objection as being
9 irrelevant. It's not a question of how long the
10 taxes go out, not the fact that, yes, they do have
11 to be paid. We'll stipulate whether or not there
12 is an injunction, if the injunction --

13 THE COURT: Let's break for the morning.
14 I want to talk to you people.

15 **(Recess.)**

16 THE COURT: Mr. Cohn?

17 MR. COHN: Your Honor, at the Court's
18 suggestion, with the aid of the Court, we have
19 reached an agreement on this issue as to the
20 amount of the bond.

21 THE COURT: Very well.

22 MR. COHN: We agree that the bond to be
23 posted by the Nature Conservancy shall be
24 \$750,000.

25 THE COURT: Very well. You'll submit an

STIPULATION

1
2 order, Mr. Cohn, for me to sign. I'll so order
3 the stipulation.

4 Mr. Benowich, you agree that's the
5 amount on behalf of your clients?

6 MR. BENOWICH: That is the number.

7 THE COURT: Agreement is so ordered by
8 the Court. Submit a written order for my
9 signature, please.

10 MR. COHN: Thank you. I would like to
11 order this aspect of the transcript.

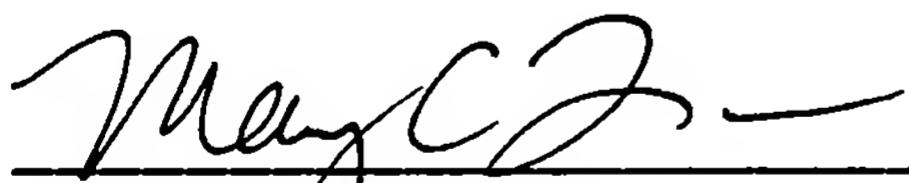
12 THE COURT: Off the record.

13 **(Discussion off the record.)**

14 THE COURT: You arrived at a very
15 reasonable number, gentlemen. Thank you very
16 much.

17 oOo

18
19 **Certified to be a true
and correct transcript.**

20 
21 **Mary C. Traynor,**
22 **Senior Court Reporter**

23
24
25
8/22/11